

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALVION PROPERTIES, INC., SHIRLEY)
K. MEDLEY, and HAROLD M.)
REYNOLDS,)
Plaintiffs,)
v.) NO. 3:08-0866
BERND H. WEBER, RAYMONDE WEBER,) Judge Sharp/Bryant
CLAUDE J. CHAUVEAU, AMERICAN)
GULF FINANCE CORP., ALVION)
PARTNERS, LLC, AGF REALTY)
SOLUTIONS, INC., TIMEDATA)
HOLDINGS, LLC,)
Defendants.)
BERND H. WEBER, CLAUDE J.)
CHAUVEAU,)
Counter-Claimants,)
Harold M. Reynolds, Shirley K.)
Medley, Donald M. Medley,)
Farmers State Bank Of Alto Pass,)
Brad Henshaw, Allain de la)
Motte, Elizabeth Melland,)
Robert M. West, Melland Group,)
LLC,)
Counter-Defendants.)

TO: The Honorable Kevin H. Sharp

REPORT AND RECOMMENDATION

Defendants Bernd H. Weber and Claude J. Chauveau have filed their motion (Docket Entry No. 640) to vacate the notice of voluntary dismissal of third-party defendant Melland Group, LLC, filed by them on February 28, 2012 (Docket Entry No. 533).

As grounds for this motion, defendants Weber and Chauveau assert that in February 2012 they negotiated an agreement with

third-party defendants West and de la Motte for the dismissal of defendants' claims against third-party defendants West, de la Motte and Melland Group, LLC. The terms and conditions of this supposed agreement are unknown to the Court. Defendants state that, in good faith reliance upon this agreement, they voluntarily dismissed with prejudice their claims against Melland Group, LLC. However, defendants assert that third-party defendants West and de la Motte breached their side agreement on March 1, 2012 (Docket Entry No. 641 at 2). In view of this alleged breach of their side agreement, defendants Weber and Chauveau seek leave by this motion to vacate their voluntary dismissal of Melland Group, LLC in order to assert their original claims against this party.

This case is presently set for a jury trial on December 11, 2012. The undersigned Magistrate Judge finds that to add a party to this case at this late date, albeit a party that has previously been involved, would, on its face, work a material prejudice to the Melland Group, LLC. Moreover, according to their motion papers, defendants Weber and Chauveau have known at least since March 1, 2012, that their side agreement with third-party defendants West, de la Motte and Melland Group, LLC, had been allegedly breached by these third-party defendants. Defendants offer no plausible explanation why they have waited until little more than a month before the trial date in order to seek to rejoin Melland Group, LLC, as a party to this action.

The undersigned Magistrate Judge finds that rejoinder of Melland Group, LLC, within six weeks before trial would be materially prejudicial to that party and, for this reason, defendants' motion to vacate their prior voluntary dismissal should be denied.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that defendants' motion to vacate their voluntary dismissal of Melland Group, LLC should be DENIED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'q denied, 474 U.S. 1111 (1986).

ENTERED this 2nd day of November 2012.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge